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January 21, 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BY HAND

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Errata to Comments on Consumer  
Protection and Customer Service  
MM Docket No. 92-263

Dear Ms. Searcy:

Enclosed please find, on behalf of the National Association of Telecommunications Officers and Advisors, National League of Cities, United States Conference of Mayors and the National Association of Counties ("Local Governments"), an original and nine copies of comments filed by Local Governments on January 11, 1993 as part of the Commission's proceeding in MM Docket No. 92-263. The enclosed comments include a summary and table of contents as required by 47 C.F.R. §1.49 of the Commission's rules and include six lines of text that were inadvertently deleted from footnote 5.

Any questions regarding the submission should be referred to the undersigned.

Thank you.

Sincerely,

*Caroline Little*

Caroline H. Little

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Section 8 of )  
the Cable Television Consumer )  
Protection and Competition )  
Act of 1992 )

MM Docket No. 92-263

Consumer Protection and Customer )  
Service )

COMMENTS OF THE NATIONAL ASSOCIATION  
OF TELECOMMUNICATIONS OFFICERS AND ADVISORS,  
NATIONAL LEAGUE OF CITIES, UNITED STATES  
CONFERENCE OF MAYORS, AND THE NATIONAL  
ASSOCIATION OF COUNTIES

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Date: January 21, 1993

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### SUMMARY

The National Association of Telecommunications Officers and Advisors, the National League of Cities, the United States Conference of Mayors, and the National Association of Counties (collectively, "Local Governments") believe that the Federal Communications Commission ("Commission" or "FCC") should adopt a set of specific standards which will ensure adequate customer service throughout the country. The Commission-established standards should be self-executing and should apply to all cable systems as of the date of adoption of the standards by the FCC, without any further action to be taken by franchising authorities.

The general rule that the Commission-established standards will apply to all cable operators should be subject to three exceptions: (1) where a franchising authority determines to waive one or more of the FCC standards in favor of less stringent standards; (ii) where the franchising authority has more stringent customer service standards already in place; or (iii) where a franchising authority exercises its right to promulgate more stringent standards or standards not addressed by the FCC standards.

Franchising authorities should be primarily responsible for enforcing the Commission-established standards. The Commission, if necessary, could act as a

final arbiter of disputes between franchising authorities and cable operators.

Local Governments believe that the Commission should establish comprehensive consumer protection rules. Customer service was a paramount concern of Congress in the passage of the 1992 Act. The legislative history of the 1992 Act is replete with testimony from cable subscribers, consumer groups and franchising authorities documenting customer service problems -- problems that are evident in both large and small systems.

Local Governments urge the Commission not to adopt the National Cable Television Association ("NCTA") standards. While the NCTA standards may provide a useful starting point in crafting a set of customer service standards, they are lacking in two key respects: they are neither stringent nor specific enough, and they do not address issues and areas that should be addressed, such as credits for a failure by the cable operator to keep a service call and credits for a failure by a cable operator to correct an outage or other reception problem promptly.

Local Governments believe that the foregoing approach will ensure adequate customer service for cable customers throughout the country, and will not unreasonably burden cable operators.

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Before the  
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In the Matter of )

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Consumer Protection and Customer )  
Service )

TO: The Commission

COMMENTS OF THE NATIONAL ASSOCIATION  
OF TELECOMMUNICATIONS OFFICERS AND ADVISORS,  
NATIONAL LEAGUE OF CITIES, UNITED STATES  
CONFERENCE OF MAYORS, AND THE NATIONAL  
ASSOCIATION OF COUNTIES

The National Association of Telecommunications  
Officers and Advisors, the National League of Cities,  
the United States Conference of Mayors, and the National  
Association of Counties (collectively, "Local Govern-  
ments") submit these comments in the above-captioned  
proceeding.

I. INTRODUCTION

In this proceeding, the Federal Communications  
Commission ("FCC" or "Commission") seeks comment on the  
adoption and implementation of Section 8 of the Cable

Television Consumer Protection and Competition Act of 1992 ("1992 Act"). Section 8 requires, among other things, that the Commission establish standards governing cable customer service within 180 days after enactment of the 1992 Act.

Local Governments believe that the FCC should adopt a set of specific standards which will ensure adequate customer service throughout the country. The Commission-established standards should be self-executing and should apply automatically to all cable systems as of the date of adoption of the standards by the FCC,<sup>1</sup> without any further action to be taken by franchising authorities.

Franchising authorities and the Commission would share the responsibility of implementing the standards. The franchising authorities would be primarily responsible for enforcing the Commission-established standards; the franchising authority would submit written reports, in a succinct format, to the Commission describing local enforcement actions. The Commission, if necessary, could act as a final arbiter of disputes between franchising authorities and cable operators. The general rule would be subject to three exceptions.

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<sup>1</sup> The Commission may determine that a transition period is appropriate for the applicability of the standards to certain cable systems. See Section III.D below.

The first exception would be if a franchising authority determines to waive one or more of the FCC standards in favor of less stringent standards. If a franchising authority granted such a waiver, the franchising authority would be required to notify the FCC of the waiver. If the FCC determined that a waiver of its standard implicates national policy considerations, involves a continuous pattern of abuse that could not otherwise be resolved locally, or concerns a matter requiring Commission expertise, it could rescind the waiver granted by the franchising authority.

The second exception would be where the franchising authority has more stringent customer service standards already in place, whether those more stringent standards were negotiated by the cable operator and the local franchising authority or whether they are applicable to the cable operator pursuant to state or local law. In this situation, the establishment of the FCC standards would not affect the local customer service standards applicable to the cable operator for each Commission-established standard that is less stringent than the standard already in place.<sup>2</sup> Only

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<sup>2</sup> For example, if the standard already in place governing telephone response time is less stringent than the  
[Footnote continued on next page]



when the local standard is less stringent would the Commission standard apply.

The third exception would be where a franchising authority continues to exercise its right to promulgate more stringent standards or standards not addressed by the FCC standards, pursuant to Section 632 of the Communications Act of 1934 ("Communications Act"), as amended by the 1992 Act. The right of a franchising authority to promulgate more stringent or different standards is wholly independent of the Commission's authority to establish federal standards, as the 1992 Act makes very clear.<sup>3</sup> That right is very clear in the statutory language of Section 8 of the 1992 Act.

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FCC standard, but the standard already in place governing installation was more stringent than the FCC standard, the cable operator would be required to comply with FCC standard governing telephone response time, but would continue to adhere to the standard already in place governing installation, rather than the FCC standard governing installation.

<sup>3</sup> Section 632(c)(1) of the Communications Act, as amended by the 1992 Act, provides that nothing in the Act is to be "construed to prohibit any State or any franchising authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted" by the Act. In addition, Section 632(a)(1) of the Communications Act, as amended by the 1992 Act, permits a franchising authority to establish and enforce customer service requirements of the cable operator. Finally, Section 636(c)(2) provides that nothing in Section 632 "shall be construed to preclude a franchising authority and a cable operator from agreeing to customer service requirements that exceed the standards established by the Commission under the Act."

Local Governments believe that the foregoing approach, which is described in greater detail in these comments, will satisfy the underlying purpose of the Section 8 of the 1992 Act -- to develop strong consumer protection standards on a national basis -- while delegating to local franchising authorities the administrative burden of enforcing the federally established standards, with oversight review resting with the Commission.

## II. DISCUSSION

### A. Nature and Applicability of FCC Rules

#### 1. FCC Should Adopt Comprehensive Rules

Customer service was a "paramount concern" of Congress in the passage of the 1992 Act. See H.R. Rep. No. 102-628, 102d Cong., 2d Sess. 105 (1992) (the "House Report"). Despite the authority in the Cable Communications Policy Act of 1984 (the "1984 Act") which enables a franchising authority to include customer service requirements in franchise agreements, customer service has been a persistent problem for many cable subscribers. The legislative history of the 1992 Act is replete with testimony from cable subscribers, consumer groups and franchising authorities documenting customer service problems -- problems that are evident in both large and

small cable systems. According to a Consumer Reports survey published in 1991, consumers were less satisfied with their local cable system than with any other type of service Consumer Reports has rated. House Report at 35. And the results of a New York City survey of cable subscribers conducted in 1990 in each of the four areas addressed by the survey -- reception, telephone service, service repair and billing -- "paint[ed] a dismal picture of customer service." House Report at 34-35.

Significantly, Congress did not view the voluntary standards adopted by the National Cable Television Association ("NCTA") in February 1990 as a solution. The legislative history of both the Senate and the House bills indicates that Congress did not view those guidelines as "stringent enough." House Report at 36. S. Rep. No. 102-92, 102d Cong., 1st Sess. 20-22 (1991) (the "Senate Report"). Congress also noted that "minimal competition in the video marketplace means that cable operators have little or no incentive to offer consistently high quality customer service." House Report at 36.

In crafting the provisions of the 1992 Act, Congress clearly intended that consumers receive customer service superior to that currently available from many cable operators. House Report at 36-37.

Thus, the 1992 Act expressly authorizes the Commission to promulgate national customer service standards. In order to effectuate those goals, the customer service standards established by the FCC should ensure an appropriate level of service is available to all cable subscribers.

It has been suggested that the 1992 Act requires the Commission to adopt only "minimum" customer service standards, which local governments could then exceed if necessary. However, such an approach would misinterpret the statute. Section 8 of the statute provides that the "[Commission] standards shall include, at a minimum, requirements governing (i) cable system office hours and telephone availability; (ii) installations, outages and service calls; and (iii) communications between the cable operator and the subscriber (including standards governing bills and refunds). The reference to "at a minimum" makes clear that the Commission standards must address the issues enumerated in the statute and may address additional customer service issues if necessary or appropriate. The statute does not say that the standards should be "minimum" standards.

Further, a "minimalist" approach would thwart Congress' goal of protecting consumers from monopolistic practices. Franchise authorities in some locales have

been able to negotiate or enact adequate standards for their residents. This has not been the case everywhere, however, whether because of long-term franchise agreements or other factors. Congress intended that captive cable customers everywhere receive a reasonable level of service. Consumers in small towns, in suburbs, and on farms deserve to have their phone calls answered and appointments kept just as much as consumers in large cities. If the Commission were to adopt a low baseline set of standards, it would merely perpetuate the framework of the 1984 Act -- plainly not the intent of Congress.

2. FCC Standards Should Be Self-Executing

The customer service standards to be adopted by the Commission should be self-executing. The Commission standards should apply automatically and uniformly to all cable systems, upon the effective date of the rules, on a standard-by-standard basis, unless: (i) a franchising authority grants a waiver of a Commission standard; (ii) more stringent standards are already in place, whether negotiated by the cable operator and the local franchising authority or whether they are applicable to the cable operator pursuant to state or local law; or (iii) until a franchising authority promulgates more stringent or different

standards. Local governments should not need to take affirmative action to adopt the Commission-established standards. If a cable operator believes that a certain standard should not apply, it should petition the franchising authority in writing. Thereafter, the franchising authority should provide a succinct, written notice to the Commission if some or any of the Commission standards would not apply and, therefore, would not be enforced by the franchising authority. Of course, a franchising authority could, on its own motion, make a determination that one or more of the federal standards should not apply to the cable operator.

The benefit of such an approach would be to provide uniform customer service to cable consumers on a national level and at the same time provide flexibility at the local level to ensure that the needs of the particular community are met without unnecessarily burdening the cable operator or putting upward pressure on the rates to be charged for cable services. If a cable operator determines that certain Commission standard(s) were too onerous, or not reasonably applicable to it, it could apply to the local franchising authority for a waiver of such standard(s). Alternatively, a local franchising authority might

determine that a waiver or change in a particular standard or standards is in the public interest, and, together with the cable operator, the parties may decide to adopt a different standard.<sup>4</sup>

On the other hand, if franchising authorities were required to take affirmative action to adopt Commission-established standards, they would undoubtedly face a barrage of piecemeal cable industry challenges, on a jurisdiction-by-jurisdiction basis. Such challenges would only delay the protection that Congress intended to provide to cable consumers, undermine the Congressional goals of requiring national customer service standards, and unnecessarily waste local resources.

B. Enforcement of Commission Standards

Consistent with Section 632(a) of the Communications Act, the Commission rules should provide that franchising authorities will enforce the consumer protection standards established by the Commission, including the right to waive such standards and impose less stringent requirements. The Commission should act as a final arbiter of any disputes.<sup>5</sup>

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<sup>4</sup> The waiver procedure is described more fully in Section II.C below.

<sup>5</sup> Local franchising authorities should continue to be  
[Footnote continued on next page]

The cable regulatory framework clearly contemplates that local jurisdictions have a primary role to play in balancing local needs, problems, and expectations against cable operator costs, facilities and equipment in order to determine the appropriate level of customer service requirements. Thus, under the 1992 Act, franchising authorities can "establish and enforce" customer service requirements, without any limitation on those powers.

Section 632(a) explicitly provides for franchising authorities to enforce customer service standards. Such enforcement authority should include the enforcement of the Commission's standards. There is precedent for such an approach to federal-local relationships in the technical standards area.<sup>6</sup> Local

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free to establish and enforce consumer protection standards, which standards might exceed, or be different than, those standards established by the Commission. The Commission should have no role whatsoever in the establishment or enforcement of the standards promulgated by localities or states.

<sup>6</sup> Local Governments recognize that a key difference between the technical standards area and the customer service area is federal preemption. However, the Commission's approach in the technical standards area is instructive. In the Report and Order adopted on February 13, 1992 establishing new technical standards for cable systems, the Commission stated that the local franchising authority is the "proper initial locus of any complaint about the quality of technical service." Report and Order In Re Cable Television Technical and

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governments, as the governmental body closest to consumers, are in the best position to undertake the necessary balancing of local problems versus cable operator interests for enforcement purposes. To preserve the Commission's role as the final arbiter of the applicability of federal standards, the Commission may wish to require franchising authorities to submit written reports periodically or upon request that would describe the circumstances under which an enforcement action was taken. The Commission could then choose to review specific local actions or patterns of local action.

The Commission would reserve to itself appellate-type jurisdiction involving the federally established standards. In those jurisdictions that enforce the Commission's standards, rather than their own, the Commission could review, as an appellate forum, those matters which implicate national policy considerations, matters which require special Commission expertise, and

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Operational Requirements, MM Docket Nos. 91-169, 85-38 (released March 4, 1992) at 31-32. The Commission further stated that it will become involved in technical standards disputes "only in the face of systemic problems or abuse that cannot be resolved at the local level." In the area of customer service, the Commission should have even greater flexibility to fashion an appropriate enforcement scheme that relies heavily on local oversight.

complaints evidencing a systemic and continuous pattern of conduct that cannot otherwise be resolved at the local level.<sup>7</sup> In addition, the Commission's rules could provide that in order to obtain Commission review of a particular complaint of a cable operator or subscriber, the local franchising authority must certify that the complaint or issue meets the jurisdictional tests for Commission review. Once certified, the Commission would review the complaint. Thus, local authorities could act as filters to ensure that the Commission is not burdened with subscriber/operator disputes that should appropriately be addressed at the local level.

C. Waiver for Less Stringent Standards

Local Governments urge the Commission to adopt, as part of its rules, a waiver procedure whereby a cable operator may obtain relief from a particular FCC

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<sup>7</sup> As noted in footnote 6, supra, this test is similar to the standard the Commission has adopted for review of technical standards disputes. Similarly, the courts have upheld the Commission's decision to rely primarily on judicial enforcement of the franchise fee limitation where the matter did not "directly impinge on a 'national policy concerning cable communications,'" or involve matters requiring special Commission expertise. Thus, the court sanctioned the Commission's decision to monitor judicial enforcement of the fee limitation and intervene only "when necessary to the achievement of congressional goals." American Civil Liberties Union v. F.C.C., 823 F.2d 1554, 1574 (D.C. Cir. 1987). Local Governments do not anticipate that the delegation of enforcement authority of local franchising authorities in the customer service area will involve litigation.

standard or standards by applying to the franchising authority for a waiver of such standard(s). The franchising authority could grant a waiver of such standard only after affording the public adequate notice and opportunity for comment. If the franchising authority granted a waiver of such standard, it would provide a succinct, written notice to the Commission of such waiver. If the Commission found the waiver implicated national policy considerations, required Commission expertise or involved a systemic and continuous pattern of abuse, the Commission could seek further comment from the franchising authority and the cable operator to determine whether to override the franchising authority's decision.

Thus, local franchising authorities would continue to shoulder the administrative burden of dealing with the facts and circumstances of a particular cable system and the needs of the community in the area of customer service, including dealing with individual subscriber complaints. By providing notice of all waivers granted by the franchising authority to the FCC, the FCC would be able to ensure that issues implicating national considerations could be addressed by the Commission.

The ability of local franchising authorities to waive the applicability of Commission regulations is consistent with the FCC's existing regulations, which allow the Commission to "waive any provision of the rules relating to cable television systems, impose additional or different requirements, or issue a ruling on a complaint or disputed question" upon filing of a petition for special relief by any interested person. 47 C.F.R. § 76.7(a). This approach is not inconsistent with the cable regulatory scheme or the Commission's responsibilities for establishing national policy in this area.

The waiver mechanism described above will also help to balance the potentially competing interests of providing cable service at a reasonable cost and meeting customer service needs. These interests may vary depending upon the particular community, and the waiver mechanism provides the necessary flexibility to ensure those needs are balanced.

D. Exemption from FCC Standards

In the NPRM, the Commission seeks comment on whether the Commission-established standards should include an exemption for measurement of compliance by small systems and whether such an exception is within the requirements of the statute.

The 1992 Act does not require or provide for an exemption from the Commission-established standards to smaller cable systems. If Congress had intended such an exemption, it could have so provided in the statute. Local Governments believe that the enforcement and waiver processes described above would provide appropriate relief to a cable operator if a particular Commission standard proved to be onerous for a cable operator or not otherwise in the public interest in a given community.

Residents of small communities are just as entitled to adequate service as anyone else. The legislative history of the 1992 Act reflects Congress' concern that the virtual absence of competition in the video marketplace means that cable operators have little or no market incentive to offer consistently high quality customer service. See House Report at 36. This concern is applicable to all sizes of cable systems.

In addition, simply because a cable system has a relatively small number of subscribers does not mean that the cable operator has less ability to comply with the Commission standards. For example, a cable system may be operated by a large multiple system operator ("MSO"), and may provide service to tens of thousands of subscribers in several adjoining communities

(franchising authorities), each serving a relatively small number of subscribers.<sup>8</sup> Each may be referred to as a "small cable system," but collectively the operator serves a large number of subscribers. That cable operator should not automatically be exempt from the Commission's standards. Moreover, the legislative history of the 1992 Act did not indicate that cable service was a problem only in larger systems. House Report at 34-37, Senate Report at 20-22.

If the Commission's rules provide an exemption for smaller systems, it should draw very narrow, careful distinctions between those that are wholly owned stand-alone systems and all other systems in order to ensure that the exemption is not abused and that the purposes of the 1992 Act are not circumvented.<sup>9</sup> Moreover, the

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<sup>8</sup> Over half of the nation's approximately 54 million cable subscribers are served by the eight largest MSOs. National Cable Television Ass'n., Cable Television Developments, 14-A (1992).

<sup>9</sup> An appropriate definition of "small cable system" would be any cable system meeting the following criteria: any stand-alone cable system (including all headends of such system) that serves a total of 1,000 or fewer subscribers in the franchise area(s) in which it provides service except for any cable system that: (a) serves a total of more than 1,000 subscribers in multiple franchise areas, even if one or more of the franchise areas has fewer than 1,000 subscribers; and (b) is directly or indirectly owned by a cable operator that directly or indirectly owns other cable systems, and the cable systems directly or indirectly owned by such a cable operator serve a total of 45,000 or more

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rules should provide that any relief from the Commission standards should have some level of oversight by franchising authorities in order to ensure that high quality customer service is available to all subscribers, while not unnecessarily burdening cable operators.

E. Franchising Authorities' Right to Promulgate Consumer Protection Rules

The Commission's rules should reflect the right of local franchising authorities under the 1992 Act to (i) impose standards exceeding Commission-established standards; and (ii) impose standards that are not addressed by Commission-established standards, either by agreement with cable operators or unilaterally. As Section 8 of the 1992 Act makes clear, these rights are in addition to the Commission's responsibility to establish federal standards, and local franchising authorities do not need to waive the Commission's standards or seek authorization from the Commission to exercise such rights.

This right of local franchising authorities to promulgate consumer protection standards was established in the 1984 Act, which enables a franchising authority

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subscribers. Under this definition, a cable system affiliated with an MSO would not be entitled to an exemption from the Commission's rules.

to require, as part of a franchise, provisions for the enforcement of customer service requirements. 47 U.S.C. § 552(a). The 1992 Act reaffirms that right.

In the NPRM, the Commission sought comment on whether a franchising authority has the right under the 1992 Act to promulgate consumer protection standards that would override existing franchising agreements. Clearly the 1992 Act authorizes franchising authorities to promulgate consumer protection standards that exceed the Commission's standards and that supersede existing franchising agreements; that is how consumers will receive the benefits promised by the new law. Whereas the 1984 Act provided that a franchising authority could require "as part of a franchise . . . provisions for the enforcement of . . . customer service requirements of the cable operator . . . ", the language in the 1992 Act, significantly, is not limited by any requirement that such provisions be a part of the franchise. Instead, the language in the 1992 Act unequivocally provides that a franchising authority may establish and enforce customer service requirements directed at cable television, without qualification.

As the legislative history of the 1992 Act indicates, Congress recognized that customer service was a significant problem. The Commission's rules should



make clear that the adoption by the Commission of federal customer service standards will be applicable to all cable systems, subject to certain exceptions as described in Section II.A.2 above. In addition, the Commission's rules, to the extent there is a need to interpret the 1992 Act, should make it clear that, if a local franchising authority determines to establish its own customer service requirements, whether they are different from or exceed the Commission's standards, it may do so, without waiting for a renewal or modification of the franchise. Such an interpretation is supported by the plain statutory language of Section 8, as well as by the legislative history of the 1992 Act.

### III. APPROACHES FOR FEDERAL CUSTOMER SERVICE STANDARDS

#### A. Commission Should Adopt Strong Standards

##### 1. NCTA Standards Are Not the Appropriate Standards

Local Governments urge the Commission not to adopt the NCTA standards. While the NCTA standards may provide a useful starting point in crafting a set of customer service standards that satisfy the purposes of the 1992 Act, the NCTA standards are lacking in two key respects: they are neither stringent nor specific enough, as Congress noted in the legislative history of